

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:FIP:B02

PLR-137227-14

Date:

March 19, 2015

Legend:

Taxpayer =

OP =

Subsidiary =

Advisor =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Month =

Month 2 =
Dear :

This is in reply to a letter dated October 1, 2014, and subsequent correspondence, requesting an extension of time on behalf of Taxpayer and Subsidiary to file an election to treat Subsidiary as a taxable real estate investment trust subsidiary ("TRS") of Taxpayer under section 856(l) of the Internal Revenue Code effective as of Date 2.

FACTS

Taxpayer is a corporation formed on Date 1 under the law of State A. It intends to file an election under section 856(c) of the Code to be taxed as a Real Estate Investment Trust ("REIT") effective for its taxable year that began on Date 2. It is the sole general partner and largest limited partner of limited partnership OP. OP is the sole owner of Subsidiary.

Subsidiary is a corporation formed on Date 3 under the law of State B. It intended to jointly elect with REIT to be a TRS of REIT beginning on Date 2 by filing Form 8875, the election to treat Subsidiary as a TRS, before Date 4.

In Month, Taxpayer and Subsidiary's taxpayer representative, Advisor, prepared and forwarded to them for signature a Form 8875. Later in Month officers of Taxpayer and Subsidiary executed the Form 8875 and forwarded it to Advisor.

On Date 5 Advisor drafted and signed a transmittal letter to be sent by certified mail, return receipt requested to the Internal Revenue Service Center in accordance with the instructions to Form 8875. That same day Advisor had the original letters and the accompanying Form 8875 scanned to send to Taxpayer and Subsidiary by e-mail, which was done that same day. The e-mail explained that these were copies of the Form 8875 to be filed that day by certified mail with the Internal Revenue Service.

In Month 2 Advisor sent Taxpayer and Subsidiary another copy of the Date 5 letters and Form 8875. Advisor noticed that he had not received back either a certified mail return card or a stamped copy of the filed Form 8875 as he had requested in the transmittal letter to the IRS Service Center. Advisor could find no record of the letter having been sent by certified mail, and could not find the letter or Form 8875 to show that they were not mailed. Advisor concluded that he could not determine from his records whether the transmittal letter and Form 8875 had been properly mailed to or received by the IRS Service Center.

The following representations are made in connection with the request for an extension of time:

1. The request for relief was filed before the failure to make the regulatory election was discovered by the Internal Revenue Service.
2. Granting the relief requested will not result in Taxpayer and Subsidiary having a lower tax liability in the aggregate for all years to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer and Subsidiary do not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time it requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer and Subsidiary did not choose to not file the election.
5. Taxpayer and Subsidiary are not using hindsight in requesting this relief. No specific facts have changed since the due date for making the election that makes this election advantageous to Taxpayer and Subsidiary.

In addition, affidavits on behalf of Taxpayer and Subsidiary have been provided as required by section 301.9100-3(e) of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, section 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, section 856(l) specifically provides that the election, and any revocation thereof, may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of new Form 8875, Taxable REIT Subsidiary Election. According to the Announcement, this form is to be used for taxable years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the taxable year. However, the effective date of the election depends on when the Form 8875 is filed. The instruction further provide that the effective date cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of

filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by regulations or by a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. Moreover, a taxpayer will be deemed not to have acted in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(i) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election

should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer and Subsidiary have shown good cause for granting a reasonable extension of time to elect under section 856(l) to treat Subsidiary as a TRS of Taxpayer. The extension of time to make the election is 90 days from the date of this letter.

This ruling is limited to the timeliness of the filing of Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of Subsidiary and Taxpayer is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jonathan D. Silver
Jonathan D. Silver
Assistant to the Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)